MOTION FILED
AUG 6 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-728

HAROLD FRANKS AND JOHNNIE LEE, *Petitioners,*

v.

BOWMAN TRANSPORTATION COMPANY, INC., ET AL., *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF FOR LOCAL 862, UNITED AUTOMOBILE WORKERS, AS AMICUS CURIAE OUT OF TIME AND BRIEF AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF FOR LOCAL 862, UNITED AUTOMOBILE WORKERS, AS AMICUS CURIAE OUT OF TIME

Local 862, United Automobile Workers (herein "UAW") respectfully moves for leave to file the attached brief amicus curiae out of time in this case. All parties have furnished written consent to the filing of this amicus curiae brief. For the reasons set forth below, UAW could not file this brief before this time.

The interest of UAW in this case arises from the fact that it is petitioner in No. 74-1349, *Local 862, UAW* v. *Ford Motor Company and Dolores Marie Meadows,* presently pending before this Court on petition for writ of certiorari. In that case, a class action involving discriminatory refusals to hire on the basis of sex, the Court of Appeals for the Sixth Circuit found no statutory prohibition of retroactive seniority for the discriminatees. Unlike the Fifth Circuit's ruling in *Franks,* the Sixth Circuit declined to conclude that "reconciliation is impossible" between the seniority-layoff protection of the incumbent workers and the rights of a class of discriminatees hired under a district court's Title VII decree, *Meadows,* 510 F.2d 939, 949 (1975). But the Sixth Circuit then returned the issue to the District Court essentially without guidance for the task of reconciling the interests of these two groups of employees. UAW Local 862 filed a petition for writ of certiorari in No. 74-1349 requesting that concurrent review be granted with *Franks* for consideration of a viable alternative to the seniority-layoff impasse which the Fifth Circuit resolved against the discriminatees and which the Sixth Circuit was unable to resolve. This Court, however, did not rule upon UAW's petition during the 1974 term; when the term concluded without any ruling,[1] the filing of this brief amicus curiae became necessary, since the decision in *Franks* may well dispose of the issue raised by UAW in No. 74-1349. Moreover, none of the parties in *Franks* having discussed the remedial alternative

[1] By the time of the Court's conclusion of its 1974 term, the brief of petitioners, which we generally support, and concurrent with which Rule 42(2) requires the filing of an amicus brief, had long since been filed.

proffered by UAW in No. 74-1349, we request permission to present that alternative in the attached brief amicus curiae.

Respectfully submitted,

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BRIEF FOR LOCAL 862, UNITED AUTOMOBILE WORKERS, AS AMICUS CURIAE

INTRODUCTION

This case presents this Court's first major look at remedial problems arising under Title VII when courts seek to restore to discriminatees the job rights they

were denied by an employer's discriminatory hiring practices. Even in the best of circumstances, resolution of the competing equities between the discriminatees and the faultless incumbent workers, who have been earning their seniority rights on the job, presents challenging and novel problems. But they become the more difficult when they arise at a time of widespread unemployment and layoff.

The lower court opinion at bar, which denies retroactive seniority to the discriminatees, assumes that either the discriminatees or the incumbent employee group must bear the burden, by suffering layoff in favor of the other group. It assumes that normal seniority rules will apply and the only question is which group is to be placed on the lower rung of the ladder. However, there is an alternative which does not threaten the layoff either of incumbent workers or newly-hired discriminatees. That is the UAW-proposed "front pay" remedy which requires the wrongdoing employer to hold both groups harmless from layoff losses in work reduction situations. We urge in the Argument this Court's approval of that remedy.[1]

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[1] The narrow question presented here is whether the employees (discriminatees or incumbents) alone must suffer the burden of the present recession or whether a court may impose that burden upon a wrongdoing employer. Not before the Court is the entirely distinct question raised by *Watkins* v. *United Steelworkers of America*, 369 F. Supp. 1221 (E.D. La. 1974), reversed, — F.2d —, 10 FEP Cases 1297 (5th Cir., decided July 16, 1975) of whether a court may remedy an employer's past discrimination by providing layoff protection to employees who are members of a minority or class discriminated against but who have not specially and individually suffered such discrimination.

ARGUMENT

I

THIS COURT SHOULD REVERSE THE COURT OF APPEALS AND APPROVE THE FRONT-PAY SAVE-HARMLESS REMEDY WHICH PRESERVES THE FAIR SENIORITY CLAIMS OF BOTH THE TITLE VII DISCRIMINATEE AND THE INCUMBENT EMPLOYEE

For the apparent seniority rights impasse perceived by the Court of Appeals there is a solution which that court does not seem to have recognized: a remedy which requires the wrongdoing employer to protect from layoff losses both those against whom he discriminated and his incumbent work force.[2] Approval of that remedy is much to be desired, for this Court doubtless perceived last term during its consideration of *DeFunis* (416 U.S. 312) the difficult character of remedies for past discrimination which throw the burden either upon the wronged minority or upon other blameless citizens. If in the employment area there is a better solution, surely it should be preferred over one which is unjust either to the discriminatee or the incumbent worker.

Thus, if the discriminatees are hired without the same protection against losses in work reduction situations which they would have had but for their employment rejection, the key Congressional purpose to provide *full* Title VII remediation is frustrated. As the Conference Committee emphasized (see 118 Cong. Rec. 7168), section 706(g) is intended to assure "that persons aggrieved by the consequences and effects of

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[2] See Cooper and Sobol, "Seniority and Testing Under Fair Employment Laws," 82 Harv. L. Rev. 1598, 1678-1679 (1969); Blumrosen, "Seniority and Equal Employment Opportunity," 23 Rutgers L. Rev. 268, 305-07, 311-12 (1969); Note, "Last Hired, First Fired Layoffs and Title VII," 88 Harv. L. Rev. 1544, 1560 n. 68 (1975).

the unlawful employment practice be, so far as possible, restored to a position where they would have been were it not for the unlawful discrimination." Given this Court's definitive ruling in *Swann* (402 U.S. 1, 26) that to remedy school segregation there must be desegregation in actuality rather than mere theory, we cannot believe that in the employment area this Court would affirm the ruling below which may leave the employment discriminatee in actuality without job and pay.

On the other hand it would also be unjust if, after years spent in earning seniority on the job, the faultless incumbent employees were subjected to layoff in favor of discriminatees hired with seniority retroactive to the time when they were denied hiring. Only a year ago a majority of this Court declined to put the desegregation burden upon suburban school districts "not shown to have committed any constitutional violation." *Milliken* v. *Bradley,* 418 U.S. 717, 745. Considering that the incumbent employees are in no way at fault for the employer's Title VII violation, a remedy which corrects the employer's wrongdoing at the expense of those employees is unjust and unwise.

Accordingly, we urge for the Court's consideration a third and better option, which requires that following reinstatement of discriminatees the offending employer hold harmless against layoff losses both the discriminatees and his incumbent employees hired between the discriminatees' original rejection and their ultimate hiring. That remedy properly puts the full burden upon the wrongdoer rather than his victims or other unoffending employees. It is a familiar rule of law that the full remedial burden shall be on the offending party. Such seminal decisions as *Story Parchment* (282 U.S. 555) and *Bigelow* (327 U.S. 251) apply the rule as between the wrongdoer and his victim.[3] The rule equally applies as between the wrongdoer and third parties; where the wrongdoer has done intentional harm he is liable to third parties as much as to the immediately injured party, because "having departed from the social standard of conduct, he is liable for the harm which follows from his act" (Prosser, Law of Torts, 4th ed., p. 33). Thus there is every reason of equity and justice for placing the full burden upon the employer who violated Title VII, requiring him to protect both the discriminatees and his incumbent work force against layoff losses in periods of work reduction.

II

THE PROPOSED FRONT-PAY SAVE-HARMLESS REMEDY IS SIMPLE IN OPERATION AND ECONOMICALLY FEASIBLE

The suggested remedy is simple in operation. To the extent that discriminatees are hired with retroactive seniority protection against layoff losses, the incumbent work force (without a save-harmless remedy) would be prejudiced by becoming vulnerable to earlier layoffs. To prevent that prejudice, under the "front-pay" proposal the employer would be required to hold harmless against layoff losses that number of employees which is equivalent to the number of discriminatees

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[3] A similar policy applies to labor contracts. Where, for example, an employer agrees in its labor contract to have certain work done at the construction site by its bargaining unit employees and then agrees with another contractor to install pieces on which the promised work has already been performed elsewhere, the employer, if it honors the second contract must pay his unit workers for the work promised them but later given away. Cf. *Plumbers, Local 638* v. *NLRB,* — F.2d —, 89 LRRM 2769, 2777-78 (D.C. Cir., 1975).

hired with retroactive seniority. If the employees to be held harmless are the discriminatees themselves, then it is only they to whom the obligation would run. On the other hand, if through collective bargaining, self-selection, or otherwise, the protection is provided to the incumbent employees, or to a mix of discriminatees and incumbents, then the number of positions protected would remain equivalent to the number of discriminatees hired.

The facts of *Meadows* illustrate the operation of the remedy.[4] Some 35 or fewer discriminatees were hired in 1974 at the Ford Truck Plant in Kentucky under the District Court's decree. Retroactive seniority would yield those employees protective dates on and after November of 1969, when Ms. Meadows and other discriminatees were originally rejected for hiring. On that basis the following save-harmless conditions would apply:

(1) In a layoff situation reaching only the employees hired in recent months—after the 35 discriminatees were hired—there would be no save-harmless obligation, since none of those employees

[4] We illustrate the remedy with the facts in *Meadows* because the record in *Franks* is unclear on this point. In *Franks*, the District Court ordered that members of the relevant class be granted the right to reapply for Over the Road (OTR) jobs, and if found qualified, to be hired or given priority over other applicants (5 EPD ¶ 8497, p. 7371, see 495 F.2d 398, 413). The record does not show the number of applicants in the class who meet the Company's formal qualifications of age, fitness and experience. While petitioners believe that 127 members of the class meet these qualifications (Supreme Court Brief, p. 9, n. 9), counsel for petitioners informs us that the Company claims that not more than four or five of the applicants are qualified and are thus eligible to benefit from the District Court's order. Discovery is proceeding and the District Court has not yet resolved these conflicting claims.

were affected by the employer's discrimination or the grant of retroactive seniority to discriminatees;

(2) Similarly, in a layoff situation so severe as to reach further up the seniority ladder than 1969, when the discriminatees were wrongfully rejected, once again there would be no save-harmless obligation since no discriminatee or incumbent employee would have avoided layoff regardless of whether retroactive seniority is granted to the discriminatees;

(3) In a layoff situation of, for example, 35 persons which reaches into but not beyond the ranks of employees with seniority dates between the discriminatees' rejection of 1969 and their hiring in 1974, the first 35 persons (excluding persons hired more recently than the discriminatees) affected would be held harmless.[5] If the remedy should go to the 35 discriminatees, they are in effect given the wage and fringe benefit protection they would have had if they had not been wrongfully rejected when they applied in 1969. If it goes to 35 incumbents, they in turn are protected against any loss caused by the grant of retroactive seniority to the discriminatees. In other words, in any contingency the discriminatees are restored fully to the job protection they would have had but for the employer's violation of their rights, without prejudicing or diminishing the earned layoff seniority of the incumbent work force.

[5] The "front-pay" proposal here is concerned with wage and fringe benefits and not the work itself. As to the latter, we show below that employers generally find work for employees whom they must pay. However, if reduction in the work force may actually become necessary, then many employees from either the "discriminatee" group or the "incumbent work force" group may opt for layoff with pay. If further employees must be selected for layoff, other equitable arrangements can be made.

Moreover, for three separate reasons, the economic consequences are modest for the employer required to provide a hold harmless remedy. First, because the number of discriminatees hired in Title VII cases is small; second, because employers have generally proved able to find productive work for employees whom they must pay; and third, because under the unemployment compensation system and corporate tax principles, only a small portion of save harmless pay represents a profit loss for the employer.

1. *Small numbers.* In *Franks* the number of affected discriminatees may be as low as four in a company with about 500 over the road drivers.[6] In *Meadows* the number of discriminatees hired under the Title VII decree is fewer than 35 in a plant of one thousand production workers. Statistics compiled by the federal Equal Employment Opportunity Commission show that EEOC has found reasonable cause to believe that hiring discrimination has been proven against only an infinitesimal proportion of the black and female work force in each of the last six years.[7] National and auto industry statistics compiled by EEOC show the very small proportion of the total work force filled by blacks or women hired in recent years, and thus make clear the small probable impact on the employers of a save harmless remedy in discriminatee situations. The EEOC nationwide tables (*infra,* Appendix B) show that only 2.8 percent of the 1974 work force is composed of blacks hired since 1969, and only 8.1 percent represents women hired

[6] See p. 6, n. 4, *supra.*

[7] In 1974, for example, such findings were made with respect to the charges of hiring discrimination of only 47 blacks and 54 women, 0.00127% and 0.00043% respectively of the blacks and women in the workforce (see Appendix A *infra*).

since that year.[8] The data for employment in motor vehicle production (Appendix C) show that only 5.9 percent and 6.1 percent of the 1974 work force are blacks and women respectively hired since 1969.[9] It is clear that a save harmless obligation arising from and in proportion to an employer's recent hiring of minority group employees, ordinarily would represent only a small additional obligation for the employer who vio-

[8] Proportion of new black and women hires (between 1969 and 1974) to total 1974 employment in all industries (computed from Appendix B):

Job Category	Blacks	Women
Total Employment	2.8%	8.1%
White Collar	2.4	9.9
Office Managers	1.8	5.6
Professional	1.1	6.6
Technical	2.7	10.2
Sales Workers	2.5	15.4
Office and Clerical	3.3	10.7
Blue-Collar	3.1	4.7
Craft	2.6	1.7
Operatives	4.0	5.7
Laborers	1.4	6.8
Service Workers	4.1	16.8

[9] Proportion of new black and women hires (between 1969 and 1974) to total 1974 employment in motor vehicle industry (computed from Appendix C):

Job Category	Blacks	Women
Total Employment	5.9%	6.1%
White-Collar	3.9	5.0
Office Managers	3.9	1.5
Professionals	2.8	4.8
Technical	2.7	3.2
Sales Workers	1.0	0.6
Office and Clerical	5.5	11.0
Blue-Collar	6.3	6.5
Craft	3.3	0.2
Operatives	7.5	8.0
Laborers	3.1	7.9
Service Workers	7.5	3.8

lated Title VII since he would be providing the protection only for the number of persons equal to the recently hired blacks and women against whom he had discriminated.

2. *Work opportunities.* It is also clear that an employer required to save employees harmless from layoff loss will often not have to provide them any front-pay but will be able to produce productive work for them. The common observation that employers will find work for those whom they must pay is confirmed by experience. For instance, employers faced with the possibility of layoffs, have often retrained or reassigned their employees for other positions. Work previously contracted out or "shunned" has been done by the employer's own employees.[10] Substantial overtime work—which has persisted even during the current recession [11]—can be reassigned to the employees who would otherwise be laid off. Moreover, where under UAW contracts [12] employers have been required to pay a minimum of four hours to an employee called in from home, the experience has been that the employee is given a full four hours work by the assignment of work which might otherwise be deferred. It seems clear, therefore, that even for the small number of workers whom the wrongdoing employer has to save harmless, he can minimize the necessity of paying wages without receiving labor.

3. *Small profits impact.* Finally, even if some front-pay to employees on layoff results, it is significant that

[10] See articles in Appendices D, E and F *infra*.

[11] Appendix G *infra* contains Bureau of Labor statistics which show that substantial overtime has continued despite the recession economy of 1974-1975.

[12] For example, 1973 UAW-General Motors National Agreement, ¶ 80.

the employer bears only a small portion of each wage dollar he must pay. In the absence of that front-pay obligation, the worker would be drawing unemployment compensation borne in part by the employer. In times of heavy unemployment, the employer must pay substantially increased amounts to the state unemployment compensation fund, which makes the employer's "experience rate" a significant factor in his payment obligation.[13] Moreover, any hold harmless wages are also deductible by the employer from his corporate income taxes, so that only about one-half of such payments may represent any loss of profits. Thus the monetary consequences of a save harmless remedy are not severe. The wrongdoing employer's actual burden is less than one-half of what he must pay and society at large pays a portion in loss of tax revenues due to increased employer wage deductions. The employer, of course, can also raise his prices. While we do not welcome lower tax revenues or higher prices, that is surely a more just result, for instead of putting the onus of legal redress and social reform on innocent individual workers and their families, the burden is shared between the wrongdoing employers and the society which has so long practiced and tolerated employment discrimination.

[13] While the formulas vary, all states have systems of levying unemployment insurance tax in relation to an individual employer's experience with unemployment. The most popular system is the "reserve-ratio system" where the employer's account is credited for contributions and against which benefits paid to former employees are charged. The reserve-ratio, which is the resulting balance to the employer's payroll, then determines the employer's tax rate. The lower the ratio (i.e. high unemployment experience), the higher tax rate and vice-versa. (*e.g.*, Ky. Rev. Stat. § 341.530; see also *California Department of Human Resources Develop.* v. *Java*, 402 U.S. 121, 126 (1971) concerning California's unemployment insurance system).

CONCLUSION

For the reasons stated, it is submitted that the lower court was in error in assuming that either Title VII discriminatees or the incumbent employee group must bear the burden of layoffs. The Court should affirm the propriety of a front-pay remedy which places the burden on the wrongdoing employer and which holds harmless from economic prejudice and layoff loss both the wronged discriminatees and the incumbent workers who have been earning their seniority protection on the job.

Respectfully submitted,

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APPENDIX

APPENDIX A

Number of Hiring Discrimination Charges by Blacks and Women Where EEOC Found Reasonable Cause, and Blacks and Women in Workforce, 1969-1974 •

	NUMBER OF HIRING DISCRIMINATION CHARGES WHERE EEOC REASONABLE CAUSE FINDING		PERSONS IN WORKFORCE	
	Blacks	Women	Blacks	Women
1969	171	46	2,720,503	9,686,006
1970	176	60	2,965,103	9,969,006
1971	222	79	2,868,375	10,323,287
1972	214	106	3,241,558	11,627,071
1973	138	104	3,629,083	12,588,822
1974	47	54	3,684,768	12,429,808

• SOURCE: July 31, 1975 letter from Alphonso Johnson, Chief, Systems and Control Division, EEOC.

APPENDIX B

1969
PAGE 58 SENSITIVE INFORMATION—UNAUTHORIZED DISCLOSURE PROHIBITED
STATE NO. UNITS # 52,424

		TOT EMPL	WHITE COLL	OFFS MGRS	PROF	TECH	SALES WRKS	OFFS CLER	BLUE COLL	CRAFT	OPER	LABOR	SERV WRKS
ALL	T	28,598,713	13,532,255	2,545,601	2,338,821	1,240,602	2,472,974	4,934,257	13,205,154	3,886,454	6,713,650	2,685,050	1,861,304
ALL	M	18,912,707	7,695,354	2,286,971	1,798,192	930,493	1,472,356	1,207,342	10,266,390	3,622,217	4,762,856	1,881,317	953,906
ALL	F	9,686,006	5,836,901	258,630	540,629	310,109	1,000,618	3,726,915	2,938,764	264,237	1,950,794	723,733	910,341
ANG	T	24,700,001	12,606,795	2,471,921	2,220,723	1,130,567	2,310,713	4,472,871	10,853,037	3,558,323	5,481,095	1,813,619	1,240,169
ANG	M	16,390,253	7,297,815	2,227,372	1,723,007	870,073	1,388,382	1,088,981	8,480,085	3,333,877	3,874,119	1,272,089	612,353
ANG	F	8,309,748	5,308,980	244,549	497,716	260,494	922,331	3,383,890	2,372,952	224,446	1,606,976	541,530	627,816
NEG	T	2,720,503	555,902	38,090	49,652	69,432	98,868	299,860	1,664,015	194,636	902,533	566,846	500,586
NEG	M	1,740,426	206,141	29,027	25,299	31,490	49,288	71,037	1,272,266	170,350	658,920	442,996	262,019
NEG	F	980,077	349,761	9,063	24,353	37,942	49,580	228,823	391,749	24,206	243,613	123,850	238,567
SSA	T	912,298	229,828	21,358	23,608	24,659	45,269	114,934	586,065	103,466	285,250	197,349	96,405
SSA	M	613,769	113,175	18,407	17,282	17,602	25,102	34,782	437,935	90,588	200,530	146,817	62,659
SSA	F	298,529	116,653	2,951	6,326	7,057	20,167	80,152	148,130	12,878	84,720	50,532	33,746
ORI	T	185,118	113,890	9,741	42,101	13,311	11,408	37,329	53,084	17,667	21,571	13,846	18,144
ORI	M	115,693	65,485	8,391	30,753	9,389	6,769	10,183	39,153	16,246	13,833	9,074	11,055
ORI	F	69,425	48,405	1,350	11,348	3,922	4,639	27,146	13,931	1,421	7,738	4,772	7,089
AMI	T	80,793	25,840	4,491	2,737	2,633	6,716	9,263	48,953	12,362	23,201	13,390	6,000
AMI	M	52,566	12,738	3,774	1,851	1,939	2,815	2,359	36,951	11,156	15,454	10,341	2,877
AMI	F	28,227	13,102	717	886	694	3,901	6,904	12,002	1,206	7,747	3,049	3,123

PAGE 1 SENSITIVE INFORMATION—UNAUTHORIZED DISCLOSURE PROHIBITED
1974 EEO 1 REPORT NATIONWIDE SUMMARY
35,796 COMPANIES

ALL	T	33,865,626	16,139,519	3,450,041	2,502,069	1,513,454	3,259,063	5,414,892	15,141,662	4,419,692	7,715,092	3,006,878	2,584,445
ALL	M	21,435,818	8,710,166	2,998,273	1,796,543	1,048,231	1,757,138	1,109,981	11,484,559	4,080,980	5,325,884	2,077,695	1,241,093
ALL	F	12,429,808	7,429,353	451,768	705,526	465,223	1,501,925	4,304,911	3,657,103	338,712	2,389,208	929,183	1,343,352
WHITE	T	28,343,506	14,571,346	3,272,384	2,321,508	1,337,385	2,958,069	4,682,000	11,996,947	3,910,465	6,011,289	2,075,193	1,775,213
WHITE	M	18,123,927	8,065,782	2,858,908	1,688,268	954,728	1,613,373	950,505	9,232,234	3,637,703	4,185,088	1,409,443	825,911
WHITE	F	10,219,579	6,505,564	413,476	633,240	382,657	1,344,696	3,731,495	2,764,713	272,762	1,826,201	665,750	949,302
MIN	T	5,522,120	1,568,173	177,657	180,561	176,069	300,994	732,892	3,144,715	509,227	1,703,803	931,685	809,232
MIN	M	3,311,891	644,384	139,365	108,275	93,503	143,765	159,476	2,252,325	443,277	1,140,796	668,252	415,182
MIN	F	2,210,229	923,789	38,292	72,286	82,566	157,229	573,416	892,390	65,950	563,007	263,433	394,050
BLACK	T	3,684,768	946,196	99,106	77,980	110,123	180,155	470,832	2,131,171	308,541	1,212,599	610,031	607,401
BLACK	M	2,163,147	340,831	74,069	40,278	49,200	81,972	95,312	1,527,550	266,634	818,292	442,624	294,766
BLACK	F	1,521,621	605,365	25,037	37,702	60,923	98,183	303,520	603,621	41,907	394,307	167,407	312,635
SSA	T	1,450,378	402,745	52,038	37,159	41,144	89,546	182,058	883,306	167,261	426,601	289,444	164,327
SSA	M	931,373	190,716	44,252	25,989	27,613	46,244	46,618	639,766	147,828	286,645	205,293	100,891
SSA	F	519,005	212,029	8,586	11,170	13,531	43,302	135,440	243,540	19,433	139,956	84,151	63,436
ASIAN	T	262,606	172,509	15,751	60,015	20,130	19,939	56,674	63,256	16,352	31,835	15,069	26,841
ASIAN	M	141,023	90,099	12,691	38,330	13,494	10,981	14,603	36,398	13,085	15,010	8,303	14,526
ASIAN	F	121,583	82,410	3,060	21,685	6,636	8,958	42,071	26,858	3,267	16,825	6,766	12,315
AMIND	T	124,368	46,723	9,962	5,407	4,672	11,354	15,328	66,982	17,073	32,768	17,141	10,663
AMIND	M	76,348	22,738	8,353	3,678	3,196	4,560	2,943	48,611	15,730	20,849	12,032	4,999
AMIND	F	48,020	23,985	1,609	1,729	1,476	6,786	12,385	18,371	1,343	11,919	5,109	5,664

APPENDIX C

1969
PAGE 223 SENSITIVE INFORMATION—UNAUTHORIZED DISCLOSURE PROHIBITED
EEOC EEO-1 NATIONWIDE SIC 3 DIGIT
NO. UNITS # 752 SIC — 371 MOTOR VEHICLES & EQUIPMENT

		TOT EMPL	WHITE COLL	OFFS MGRS	PROF	TECH	SALES WRKS	OFFS CLER	BLUE COLL	CRAFT	OPER	LABOR	SERV WRKS
ALL	T	720,244	159,729	53,974	26,635	21,234	4,338	53,548	543,046	94,881	403,755	48,410	17,469
ALL	M	644,603	129,265	53,573	25,916	20,283	4,150	25,343	498,965	94,111	366,123	38,731	16,373
ALL	F	75,641	30,464	401	719	951	188	28,205	44,081	770	37,632	5,679	1,096
ANG	T	599,008	154,557	52,638	26,121	20,677	4,316	50,805	431,940	89,857	307,718	34,365	12,511
ANG	M	532,581	125,336	52,244	25,444	19,767	4,129	23,752	395,477	89,155	276,828	29,494	11,768
ANG	F	66,427	29,221	394	677	910	187	27,053	36,463	702	30,890	4,871	743
NEG	T	104,392	3,981	1,089	263	392	6	2,231	95,844	3,788	83,702	8,354	4,567
NEG	M	96,725	2,970	1,084	228	356	5	1,297	89,529	3,745	77,902	7,802	4,226
NEG	F	7,667	1,011	5	35	36	1	934	6,315	43	5,720	552	341
SSA	T	14,892	714	174	62	83	13	302	13,824	1,006	11,253	1,565	354
SSA	M	13,472	544	172	59	80	13	220	12,583	982	10,282	1,319	345
SSA	F	1,420	170	2	3	3		162	1,241	24	971	246	9
ORI	T	935	358	27	177	62	3	89	566	65	463	38	11
ORI	M	865	316	27	174	60	3	52	539	64	438	37	10
ORI	F	70	42		3	2		37	27	1	25	1	1
AMI	T	1,017	119	46	12	20		41	872	165	619	88	26
AMI	M	960	99	46	11	20		22	837	165	593	79	24
AMI	F	57	20		1			19	35		26	9	2

PAGE 182 SENSITIVE INFORMATION—UNAUTHORIZED DISCLOSURE PROHIBITED
1974 EEO-1 REPORT SUMMARY OF NATIONWIDE INDUSTRIES
1,153—UNITS 317—EMPLOYERS SIC—371 MOTOR VEHICLES AND EQUIPMENT

ALL	T	1,075,894	243,251	92,892	50,308	25,983	6,681	67,307	806,397	157,022	599,118	50,257	26,246
ALL	M	935,084	200,737	91,101	47,258	24,204	6,454	31,720	710,201	155,994	513,592	40,615	24,146
ALL	F	140,810	42,514	1,791	3,130	1,779	227	35,587	96,196	1,028	85,526	9,642	2,100
WHITE	T	876,129	226,098	87,134	47,880	24,469	6,526	60,089	631,133	145,061	448,986	37,086	18,898
WHITE	M	766,392	187,945	85,597	45,078	22,866	6,305	28,099	560,966	144,208	387,041	29,717	17,481
WHITE	F	109,737	38,153	1,537	2,802	1,603	221	31,990	70,167	853	61,945	7,369	1,417
MIN	T	199,765	17,153	5,758	2,508	1,514	155	7,218	175,264	11,961	150,132	13,171	7,348
MIN	M	168,692	12,792	5,504	2,180	1,338	149	3,621	149,235	11,786	126,551	10,898	6,665
MIN	F	31,073	4,361	254	328	176	6	3,597	26,029	175	23,581	2,273	683
BLACK	T	167,429	13,535	4,741	1,672	1,093	74	5,955	142,353	9,012	128,448	9,893	6,541
BLACK	M	140,622	9,927	4,514	1,392	958	70	2,993	124,803	8,906	107,305	8,592	5,892
BLACK	F	26,807	3,608	227	280	135	4	2,962	22,550	106	21,143	1,301	649
SSA	T	28,169	2,232	669	311	242	60	950	25,196	2,376	19,740	3,080	741
SSA	M	24,622	1,766	659	298	226	58	525	22,144	2,322	17,654	2,168	712
SSA	F	3,547	466	10	13	16	2	425	3,052	54	2,086	912	29
ASIAN	T	2,255	913	115	465	130	11	192	1,318	206	1,003	109	24
ASIAN	M	1,771	734	109	437	114	11	63	1,016	196	758	62	21
ASIAN	F	484	179	6	28	16	0	129	302	10	245	47	3
AMIND	T	1,912	473	233	60	49	10	121	1,397	367	941	89	42
AMIND	M	1,677	365	222	53	40	10	40	1,272	362	834	76	40
AMIND	F	235	108	11	7	9	0	81	125	5	107	13	2

APPENDIX D

Business Week, June 9, 1975, pp. 25-26

UNIONS

WHEN WORKERS HIT THE STREET—TO SELL

During a recession, the traditional ways to cut inventories and prevent layoffs include such devices as shortening the work week or cutting pay. Last week, Wisconsin-based Kimberly-Clark Corp. tried a different approach: It took 75 workers off production lines and sent them out into the street to sell the consumer paper goods, such as Kleenex tissues and towels and Kimbies diapers, that they produce.

For production workers, it was a chance to discover a new talent

The move, made with the approval of Local 482 of the United Paperworkers—and done only with volunteers—resulted in additional sales of some $250,000. But, says the company's general sales manager, W. M. Bray, who coordinated the effort, "On the numbers alone, we probably wouldn't have done it." An innovator in employee relations, Kimberly-Clark tried the idea for several reasons:

- It allowed a blitz attack on 1,461 stores in northern Wisconsin and upper Michigan that are not covered by Kimberly-Clark's usual sales routes. Hitting these seasonal stores just before the start of their peak tourist season resulted in purchases of a broader range of products by store managers.

- It gave mill workers a greater appreciation for the sales job and for the value of producing quality goods. For example, Sherald Laabs, secretary of the Paperworkers local, who participated in the program, says: "When we pack boxes, we don't necessarily put all the labels the same way." After several days of repacking cases, box by box, for better display effect, Laabs promises: "Now, I'll try to get them loaded the same way in the plant."

■ It saved Kimberly-Clark the cost of hiring temporary helpers to staff a big promotional campaign already scheduled for late May.

■ For production workers, it was a chance to discover a new talent. Some workers who showed skill and interest in sales will be groomed for permanent sales jobs, says John F. Gillen, regional sales manager.

Though Kimberly-Clark developed this program on its own, it is not an entirely new idea. International Business Machines Corp. has for years retrained production and administrative employees for sales and engineering jobs. Under the lifetime employment system in Japan, many major companies use such schemes as converting factory workers to salesmen to avoid layoffs. For example, Toyo Kogyo Co., which has put 2,500 office and factory workers on eight-month selling assignments, has seen sales jump some 30% or 40% since January. The company builds the Mazda car.

In Kimberly-Clark's case, the program was spurred by a need to cut inventories rather than the fear of imminent, layoffs. Adds President Harry J. Sheerin, "It fit in with our philosophy that the best motivated people are involved, aware people."

Once the idea was approved, it took about three weeks to implement. Union officials, finding no conflict with provisions in labor contracts, backed the plan. "We think we're making a good product, and so we're out helping push our product," says Jack Callaway, the local union president.

Eye contact. After a cram course in salesmanship, the 75 workers who volunteered for sales went to their assigned areas on Monday, May 19. Forty-six workers called on retail stores in Michigan and Wisconsin. The new salesmen received promises of orders from all stores visited and commitments from about 75% of them.

Another 29 volunteers helped conduct truckload sales and set up in-store promotional displays at Chicago-area Mont-

gomery Ward stores. Even before advertising began, some stores were selling out their truckloads and ordering more. "It was just amazing," says Sherald Laabs, who helped set up a display. "As fast as we could set up the boxes, they were being taken away."

Kimberly-Clark says it will repeat the one-week program in the future "if conditions are right." Says Sheerin: "This was meant to take care of a short-term challenge. We don't know if this will turn out to be a financial bonanza, but it has caused a very positive reaction among all our employees."

APPENDIX E

The Wall Street Journal, February 6, 1969, p. 1

Keeping Busy

FIRMS TRY A VARIETY OF TACTICS TO AVOID LAYOFFS IN SLOW TIMES

LOCKHEED LENDS ENGINEERS TO OTHER EMPLOYERS; SOME MACHINISTS TURN PAINTER

Furloughed Men May Vanish

By RALPH E. WINTER

Staff Reporter of THE WALL STREET JOURNAL

What does a company do with employes it has no work for?

It may retrain them for different jobs or transfer them to another office, factory or production line. It may take on business it wouldn't ordinarily handle just to give the employes something to do. It may even invent tasks to keep the workers busy or lend them to another company, until business picks up enough for them to resume their old jobs.

Indeed, say executives, about the only thing a savvy company *won't* do with temporarily unneeded employes these days is lay them off. Main reason: In today's tight labor market, men laid off are almost sure to find other jobs rather than sit around waiting for recall.

At best, companies say, this means the firm that lays men off will lose whatever it has spent to train them—which, in the case of skilled workers, is likely to be quite a lot. "We figure we'd be throwing $25,000 out the window if we laid off a tool-and-die maker," says John Bohannon, industrial relations director of Stanley Works, a New Britain, Conn., machinery maker.

Buying Repair Work

At worst, executives add, a company may be unable to find replacements for men it lays off when time comes to expand production again. "Good thing we didn't lay off anyone last summer, because we'd never have gotten the men we're using now," says Jacob Kamm, executive vice president of American Ship Building Co., Lorain, Ohio. Prior to 1968, his firm had laid off half its repair crews during the spring and summer ore-shipping season, when repair work is scarce. Last year it managed to avoid layoffs—by buying a damaged 11,500-ton ore vessel and setting its crew to work overhauling the ship's ripped bottom. American Ship plans to operate the vessel when the ore-shipping season on the Great Lakes reopens.

Such attitudes are reflected in the national layoff rate, which last year dropped to a monthly average of 1.2 furloughs for each 100 U.S. manufacturing employes. That was down 14% from the 1967 monthly average and 33% below the layoff rate five years earlier.

Layoffs, of course, are likely to rise again if a nationwide economic slowdown or recession erodes employers' confidence that any workers not needed at the moment will be needed again soon. But many companies vow they will continue to try to avoid layoffs as much as possible even during a recession and predict that the layoff rate will not climb as much in any future downturn as in past downturns of comparable severity.

The reluctance to write off costs of training skilled employes who might vanish if they were laid off is one reason. Another is a spreading conviction that frequent heavy layoffs damage a company's reputation—in its plant communities and among workers it might want to hire in the future.

Loans From Lockheed

Lockheed Aircraft Co., for one, believes that "if we don't do a better job of offering continuous employment, engineers just aren't going to be interested in coming to work for us," says Kay Kiddoo. He recently was named to the new job of manpower coordinator, in which his chief task is helping Lockheed divisions find ways to avoid layoffs.

To that end, Lockheed last year set up a plan called LEND (Lockheed Engineers for National Deployment). Under it, Lockheed has lent 125 engineers to employers ranging from the Philco-Ford subsidiary of Ford Motor Co. to Stanford University until there was work for them at Lockheed again. The company last year also lent several hundred tool-and-die makers to Avco Corp. and Norair division of Northrop Corp., calling them back later to work on Lockheed's program to build the giant "air bus" jetliner. Lockheed charges companies that borrow its employes only enough to pay their wages and fringe benefits while they are out on loan and keeps the employes on its own payroll.

Whatever comes of such plans in the future, employers' current attitude contrasts sharply with the recent past. Periodic layoffs—during seasonably slack times or the intervals between completion of a contract and the start of work on a new one—were an accepted part of life in factory towns even during generally prosperous times. (So much so that one joke had a worker's son remarking: "I go to school five days, then I'm laid off for the weekend.")

The Makework Strategy

The change is measured most dramatically by the willingness of many companies to dig up minor assignments if they can't think of any other way to keep valued employes on the payroll. Most companies hate to admit this practice publicly for fear of arousing shareholders' wrath, but there's no doubt it is growing.

Danly Machine Specialties Inc. of Chicago, for instance, last summer put eight men to work for two months assembling a catalog—at the full pay they normally draw for the highly skilled task of wiring control panels for forming presses. A Midwest transportation-equipment maker similarly assigned a group of highly paid machinists to paint their machines during a slack period, and an aerospace company told 40 of its engineers to pass their time "updating manuals" until the company could put them to work on a new contract.

A more productive—but still expensive—way to avert layoffs is to take on work a company has shunned in the past, for the specific purpose of keeping employes busy at their normal jobs during what otherwise would be slow periods. This method is particularly favored by companies in highly seasonal or cyclical businesses.

Perini Corp., a Framingham, Mass., construction company, for instance, says it bids nowadays with "sharpened pencil" for jobs involving considerable inside work that can be done during the winter, when it used to lay off many of its crews. It adds that it has spent a good deal of money to buy wood framing and polyethylene sheets to shield some construction sites from winter storms so that its crews can continue working during the cold months. The work could be done more cheaply in the busy spring and summer seasons. Perini says—but it might not be able to find workers then if it let its experienced men go during the winter.

The steel industry used similar tactics to keep many of its skilled employes busy last summer and fall during a production slump brought on by customer inventory-cutting (the customers had built up heavy stockpiles as a hedge against a strike that had been threatened for midsummer but never came off). A Republic Steel Corp. district manager says he held layoffs to half the number experienced in comparable downturns in the past, largely by having his own crews perform maintenance work the company usually farms out to independent contractors.

Arguments Inside the Industry

Such policies "caused some pretty heated arguments last fall" within the industry, says an administrator for another steel company. "The cost-control people," he says, "wanted more men laid off," but "the operating people said if we laid off skilled men we wouldn't be able to get them back." At most companies, the operating men won, but in some cases it was a costly victory. Republic indicated fourth-quarter profits dropped 48% from the 1967 period—partly, the company said, because of the cost of "retaining on the payroll many skilled employes temporarily not needed" in normal operations.

Putting temporarily idle workers into training programs to upgrade their skills or teach them new ones is a particularly popular way to avoid layoffs. Such programs are not confined to workers who already have reached the skilled category when layoffs threaten. Marathon Oil Co. has kept half a dozen roustabouts no longer needed in its Yates Field in Texas by retraining them to be computer operators.

Arthur G. McKee & Co., Cleveland-based engineering firm, has developed several training programs specifically so that "in slack times we can keep good people on and have them studying through seminars and technical reading to further their skills," says E. W. Moerhart, vice president. At one point last year, when several expected orders were postponed McKee had 10% of its Cleveland staff in such training programs, he says.

Engineers as Planners

Aerojet-General Corp. of El Monte, Calif., has developed a variation of this strategy. Temporarily idle engineers develop new business for the company while they also prepare themselves to work on that new business if it develops. Aerojet assigns especially talented engineers whose

production projects are being wound up to an Operations Systems Analysis Group that draws up long-range plans and does preliminary work on new projects that may eventually develop into paying programs. Engineers in the group also function as a "skills bank" that other Aerojet divisions can call on for help in tackling special problems.

Intracompany transfers of workers no longer needed in their present locations are one of the most expensive ways of avoiding layoffs or dismissals. But companies nevertheless are trying this strategy, too—and not only for especially skilled people. When Avco Delta Corp., financial subsidiary of Avco Corp., moved its headquarters from London, Ontario, to Cleveland a few months ago, it transferred at company expense 175 employes, including some 100 secretaries and clerical workers.

Hiring new secretaries and clerks in Cleveland would have been cheaper, but an Avco Delta official indicates the company was afraid it wouldn't have been able to get as many as it needed. "Good secretaries are extremely difficult to find now, and even competent clerical help familiar with office routine isn't easy to get," he says.

Diversification Helps

Shifting employes from one operation to another is easiest for companies that have diversified widely—and some companies say they have diversified at least partly to avoid mass layoffs. Raytheon Co., Lexington, Mass., had to make extremely heavy layoffs five years ago when its defense work was heavily concentrated in two missile systems. Since then the company has worked hard to land many different types of projects from different Government agencies, and it now works on radar and sonar gear, space technology, data-handling and communications-systems projects, among others. One result: It recently absorbed in other projects all employes displaced when one

of its Boston-area plants completed a major contract, a spokesman reports.

Some of the companies most eager to avoid layoffs say the chief reason is restrictive union rules that would force them to lay off employes they wanted to keep, while keeping workers they would prefer to lay off, if they did resort to furloughs. "Because of union agreements that rigidly enforce seniority, we have to lay off the younger, engineering-trained men and retain the older guys who have experience but often lack versatility for new types of work," grumbles an official of a Midwestern railroad. The result, he says, is that "all of us in the railroad industry are trying to avoid layoffs."

Much as such union rules may displease companies, the new management stress on avoiding layoffs naturally pleases unions. "It's a very healthy thing," says P. L. Siemiller, president of the million-member International Association of Machinists.

APPENDIX F

The Wall Street Journal, July 31, 1975, p. 1

Manning the Paint Buckets

Dow Chemical Co. in Midland, Mich., early this year guaranteed employes at major plants that they wouldn't be laid off if they agreed to reassignment to construction and maintenance projects when they weren't needed at their regular jobs. The unions agreed to that arrangement, and Dow employes picked up hammers, wrenches and paint buckets to handle expansion, modernization and repair work that is normally contracted out to other companies. Even some white-collar workers participated. "It worked like a charm," a Dow spokesman says. As demand picked up, employes went back to their regular jobs.

APPENDIX G

Production Worker Employment and Average Overtime Hours in Manufacturing and Motor Vehicle

January 1974-June 1975

	Manufacturing		Auto	
	Production Worker Employment	Average Overtime Hours	Production Worker Employment	Average Overtime Hours
	(000)		(000)	
1974				
January	14,691	3.3	681.9	3.2
February	14,598	3.3	623.5	3.1
March	14,582	3.4	603.3	3.2
April	14,629	2.7	661.3	1.5
May	14,665	3.3	661.9	3.4
June	14,903	3.5	679.1	3.4
July	14,605	3.3	636.3	4.2
August	14,826	3.5	636.8	4.0
September	14,913	3.6	706.9	4.3
October	14,702	3.3	702.0	4.8
November	14,351	2.9	683.3	2.9
December	13,814	2.8	630.0	2.3
Average	14,607	3.2	658.6	3.4
1975				
January	13,225	2.2	566.2	1.0
February	12,851	2.2	508.5	1.2
March	12,747	2.2	539.9	1.2
April	12,732	2.2	554.1	1.6
May	12,796	2.2		
June	12,996	2.4		

NOTE: Data not seasonally adjusted.

SOURCE: Bureau of Labor Statistics.